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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CITIZENS FOR RESPONSIBILITY AND  
ETHICS IN WASHINGTON  
1400 Eye Street, N.W., Suite 450  
Washington, D.C. 20005

Plaintiff,

v.

U.S. DEPARTMENT OF DEFENSE,  
DEFENSE INFORMATION SYSTEMS  
AGENCY  
701 South Courthouse Road  
Arlington, Virginia 22204-2199

Defendant.

Civil Action No.

**COMPLAINT FOR DECLARATORY JUDGMENT  
AND INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, as well as agency FOIA regulations, challenging the failure of the Defense Information Systems Agency ("DISA") of the U.S. Department of Defense to fulfill the request of plaintiff

for emails that came into or went out of the email system maintained and controlled by the White House Communications Agency (“WHCA”), a component of DISA, from specified email addresses. Plaintiff also seeks telephone logs of all calls made by Karl Rove to a telephone number associated with the Republican National Committee.

2. This case seeks declaratory relief that defendant is in violation of the FOIA for failing to fulfill plaintiff’s request for records, and injunctive relief that defendant immediately and fully comply with plaintiff’s requests under the FOIA.

### **JURISDICTION AND VENUE**

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

4. Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue code. CREW is committed to protecting the right of citizens to be informed about the activities of government officials and to ensuring the integrity of government officials. CREW seeks to empower citizens to have an influential voice in government decisions and in the government decision-making process through the dissemination of information about public officials and their actions. To advance its mission, CREW uses a combination of research, litigation and advocacy. As part of its research, CREW uses government records made available to it under the FOIA.

5. CREW has invested considerable organizational resources in pushing the U.S. government to take ethics issues seriously. CREW monitors closely the laws and rules

applicable to government agencies.

6. CREW is harmed by DISA's failure to comply with the FOIA, because that failure harms CREW's ability to provide full, accurate, and current information to the public. 5 U.S.C. § 552(a)(6)(c). Absent this critical information, CREW cannot advance its mission of educating the public to ensure that the public continues to have a vital voice in government decisions.

7. CREW will analyze the information it receives that is responsive to its request, and will share it with the public through memoranda, reports, or press releases. In addition, CREW will disseminate any documents it acquires from its request to the public through [www.governmentdocs.org](http://www.governmentdocs.org), an interactive website CREW founded and that includes thousands of pages of public documents from a number of organizations in addition to CREW. The CREW website also contains links to thousands of pages of documents acquired from multiple FOIA requests. See, e.g., <http://www.citizensforethics.org/node/25784>. Visitors to CREW's website can peruse the FOIA request letters, the responses from government agencies, and a growing number of documents responding to FOIA requests.

8. Defendant DISA is an agency within the meaning of 5 U.S.C. § 552(f). DISA is in possession and control of the requested records and is responsible for fulfilling plaintiff's FOIA request.

### **STATUTORY FRAMEWORK**

#### **The Freedom of Information Act**

9. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records to the public unless one or more specific statutory exemptions apply.

10. An agency must respond to a party making a FOIA request within 20 working days,

notifying that party of at least the agency's determination whether or not to fulfill the request and of the requester's right to appeal the agency's determination to the agency head. 5 U.S.C. § 552(a)(6)(A)(I).

11. An agency must respond to a FOIA appeal within 20 working days, notifying the appealing party of the agency's determination to either release the withheld records or uphold the denial. 5 U.S.C. § 552(a)(6)(A)(ii).

12. The FOIA requires agencies to promulgate regulations that provide for expedited processing of FOIA requests where the requester has demonstrated a "compelling need" as well as "other cases determined by the agency." 5 U.S.C. § 552(a)(6)(E)(I). The FOIA defines "compelling need" as including requests "made by a person primarily engaged in disseminating information" where there is an "urgency to inform the public concerning actual or alleged Federal Government activity." *Id.* at § 552(a)(6)(E)(v)(III). Department of Defense regulations, found at 32 C.F.R. § 286.4(d)(3), mirror this requirement.

13. Agencies are required to make a determination on a request for expedition within 10 calendar days "after the date of the request," 5 U.S.C. § 552(a)(6)(E)(ii)(I), and to give "expeditious consideration" to administrative appeals of such determinations. *Id.* at § 552(a)(6)(E)(ii)(II).

14. Agency decisions to deny or affirm denial of a request for expedition are subject to judicial review "based on the record before the agency at the time of the determination." 5 U.S.C. § 552(a)(6)(E)(iii).

15. A requester is not required to exhaust administrative remedies prior to seeking judicial review of an agency's denial of a request for expedited processing. *See, e.g., Al-Fayed*

v. CIA, No. 00-2092, 2000 U.S. District LEXIS 21476, at \*8 (D.D.C. Sept. 20, 2000).

16. The FOIA also requires each agency to promulgate regulations specifying a fee schedule for the processing of FOIA requests and establishing procedures and guidelines for the waiver or reduction of fees. 5 U.S.C. § 552(a)(4)(A). Defendant DISA's fee waiver regulations are found at 32 C.F.R. § 286.28. Both the FOIA and DISA regulations provide that documents should be produced at no charge to the requester or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. 5 U.S.C. § 552(a)(4)(A)(iii); 32 C.F.R. § 286.28(d).

17. This Court has jurisdiction, upon receipt of a complaint, "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

18. The FOIA provides a mechanism for disciplinary action against agency officials who have acted inappropriately in withholding records. Specifically, when requiring the release of improperly withheld records, if the court makes a written finding that "the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously," a disciplinary investigation is triggered. 5 U.S.C. § 552(a)(4)(F).

**FACTS GIVING RISE TO PLAINTIFF'S CLAIMS FOR RELIEF**

19. On May 3, 2007, CREW sent a FOIA request to defendant seeking from the WHCA any and all emails that came into or went out of any email system maintained or controlled by the WHCA between January 1, 2001 and the present from the following email addresses: (1) gwb43.com; (2) rnchq.org; (3) georgebush.com. Letter from Anne L. Weismann to DISA, May 3,

2007 (attached as Exhibit 1). CREW also requested telephone logs of any calls made by Karl Rove between January 1, 2001 and the present through any switchboard operated or controlled by the WHCA, including the Signal and Royal Crown switchboards, to a telephone number associated with the Republican National Committee. Id.

20. CREW also sought a waiver of fees associated with processing its request given that the request concerns the operations of the federal government, the disclosures will likely contribute to a better understanding of relevant government procedures and the request is primarily and fundamentally for non-commercial purposes. Id.

21. In addition, CREW sought expedition based on the urgency to inform the public about the extent to which top White House aides used government resources to conduct political activities, particularly in light of revelations about the use by high-ranking White House officials of outside email accounts. Id.

22. By letter dated May 8, 2007, DISA FOIA Control Officer Robin M. Berger acknowledged receipt of CREW's FOIA request. Letter from Robin M. Berger to Anne Weismann, May 8, 2007 (attached as Exhibit 2). DISA further advised CREW that because of the office's backlog of initial requests and limited personnel resources, the agency would not be able to complete its processing of CREW's request within the statutory time requirement. Id. DISA estimated a date of completion of 90 days from the date of its letter. Id. Finally, DISA did not acknowledge or address CREW's request for expedition.

23. To date, CREW has heard nothing further from DISA regarding CREW's May 3, 2007 FOIA request. The statutory time for DISA to respond to plaintiff's request has run out and CREW has now exhausted its administrative remedies. See, e.g., Oglesby v. U.S. Dep't of Army,

920 F.2d 57, 65 (D.C. Cir. 1990).

**PLAINTIFF'S CLAIMS FOR RELIEF**

**CLAIM ONE**  
**(Failure to Expedite)**

24. Plaintiff realleges and incorporates by reference all preceding paragraphs.

25. Plaintiff demonstrated that it met the requirements for expediting its FOIA request to DISA.

26. To date, plaintiff has not received a substantive response to its request from DISA.

27. Therefore, defendant violated FOIA's mandate to expedite the processing of plaintiff's FOIA requests and defendant's own regulations by failing to expedite plaintiff's FOIA. 5 U.S.C. § 552(a)(6)(E)(ii); 32 C.F.R. § 286.4(d)(3).

**CLAIM TWO**  
**(Failure to Produce Records)**

28. Plaintiff realleges and incorporates by reference all preceding paragraphs.

29. Plaintiff properly asked for records within the custody and control of DISA.

30. Plaintiff is entitled by law to access to the records requested under the FOIA, unless defendant makes an explicit and justified statutory exemption claim.

31 Therefore, defendant violated FOIA's mandate to release agency records to the public by failing to release the records as plaintiff specifically requested. 5 U.S.C. §§ 552(a)(3)(A), 552(a)(4)(B).

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff respectfully requests that this Court:

(1) Declare that DISA has violated the Freedom of Information Act by failing to lawfully

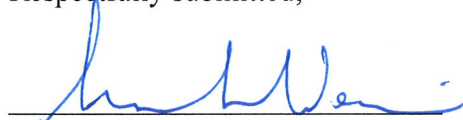
satisfy plaintiff's FOIA request of May 3, 2007;

(2) Order DISA to respond to plaintiff's FOIA request immediately;

(3) Award plaintiff reasonably attorney fees and litigation costs in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and

(8) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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Dated: November 6, 2007